THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION NO.22354 OF 2003

DATED 03.08.2005

Between:

Y. Prasad & 3 others

… PETITIONERS

AND

The State of A.P., rep., by its Secretary

& 4 others.

…RESPONDENTS

ORAL ORDER:-

The writ petition is filed seeking a Mandamus to declare the proceedings vide Rc.No.5877/C4/2003, dated 27.08.2003 issued by the District Education Officer, Kurnool, as illegal, arbitrary and consequently, direct the respondents to consider the case of the petitioner for approval of the appointments as per the selections made on 06.04.2000.

The grievance of the petitioners is that the 5th respondent -Management appointed them as SGBT on 20.06.1999. While so, the 2nd respondent accorded permission to the 5th respondent to open new sections during 1995 due to increase in strength, as such, the 5th respondent started new sections, by creating four additional posts in which the petitioners were appointed. The 3rd respondent by his proceedings dated 18.02.2000 accorded permission to fill up four unaided SGBT posts and again issued proceedings dated 06.04.2000 for conducting written test and interview as per G.O.Ms.No.1 and the same was conducted on 16.04.2000 and the petitioners appeared for interview along with others.

While the matter stood thus, the 4th respondent filed W.P.No.17852 of 2001 seeking a direction to release the grant in aid in respect of 7 posts and this Hon'ble Court granted interim order dated 13.07.2001 in WPMP.No.14275 of 2001 directing the respondents to put the proposals regarding admission of 7 posts to grant in aid before the high level committee which shall consider and dispose of the same within a period of ten weeks. When the petitioners enquired as to why their posts were not admitted into grant-in-aid, they came to know that their posts were shown in the 2nd respondent proceedings dated 07.04.2003 as not approved. Aggrieved by the same, the petitioner filed WP.No.10791 of 2003 and this Court disposed of the same directing the 3rd respondent to take appropriate decision on the proposals said to have been sent to him in accordance with the rules and communicate the same to the 5th respondent within a period of two months from the date of receipt of a copy of the order. In pursuant to the said orders, the 3rd respondent asked the 5th respondent to submit relevant material and in turn the 5th respondent on 19.08.2003 furnished all relevant documents relating to approval. Thereupon, the 3rd respondent issued the impugned proceedings dated 27.08.2003 rejecting the proposals of the petitioners. Hence, this writ petition.

A detailed counter affidavit has been filed by the 5th respondent reiterating the facts narrated in the writ petition.

Learned counsel for the petitioner contended that the petitioners were selected by a duly constituted selection committee and thereafter, the 5th respondent – Management had sent the proposals to the District Educational Officer (for short "DEO") for approval and the DEO acknowledged the receipt of the proposals and if the proposals have not been accepted within a particular period, the proposals are deemed to have been accepted in law and therefore, she prays to allow the writ petition.

On the other hand, the Government Pleader appearing for respondents 1 to 4 contended that the 5th respondent – Management has not sent the proposals and the DEO nominee has not participated in the selection procedure and the seal of the office of the Deputy Educational Officer has been created by the 5th respondent – Management and in pursuance of the directions given by this Court, certain information has been called for and since no proposals have been pending with the competent authority, he prays that the writ petition is devoid of merit and is liable to be dismissed.

On the other hand, the learned counsel for the 5th respondent – Management contended that the DEO's nominee has allotted marks to the candidates who participated in the interview and after following due procedure, the proposals have been submitted to the DEO for approval and therefore, if the proposals have not been rejected or approved, they shall be deemed to have been accepted and hence, she prays to allow the writ petition.

The impugned proceedings dated 27.08.2003 is under challenge. The stand of the DEO is that the 5th respondent – Management has not submitted the proposals for approval of the selection of four unaided Secondary Grade Teacher posts which were conducted by the Staff Selection Commission on 16.04.2000 and no such proposals have been received by the DEO, therefore, the case of the petitioners has been rejected. The case of the petitioners is that as per the proceedings of the 3rd respondent dated 18.02.2000, permission was accorded to fill up four unaided Secondary Grade Teacher posts. Again the 3rd respondent issued proceedings in

Rc.No.11759/A7/2000, dated 06.04.2000, for conducting written test and interview as per G.O.Ms.No.1 and the same was conducted on 16.04.2000. The main dispute is with regard to non-submission of proposals. The case of the writ petitioners as well as the 5th respondent – Management is that proposals for approval have already been sent to the competent authority.

On the other hand, the respondents 1 to 4 specifically contended that the proposals for approval have not been pending with the competent authority and therefore, in the absence of any approval, the prayer in the writ petition cannot be granted. Under Sub-rule 5 of Rule 12 of Establishment of School (Private including Minority) Rules, DEO nominee has to be participated in the selection procedure. But, however, selection would not be vitiated only on the ground of absence of DEO's nominee if the educational agency has offered reasonable explanation. The burden of proving the same shall lie with the educational agency. The case of the 3rd respondent is that the DEO nominee is not at all present in the selection process, whereas, the contention of the 5th respondent – Management is that DEO nominee has participated in the selection process and he also awarded marks to the candidates who participated in the interview. Since, it is purely a disputed question of fact, it cannot be determined by this Court. Furthermore, it is a specific case of the petitioners as well as the 5th respondent – Management that the proposals have been submitted to the competent authority.

The learned counsel for the petitioners also brought to the notice of this Court the endorsement made by the DEO in the service register, whereas, the learned Government Pleader appearing for respondents 1 to 4 contended that the seal of the office and the initials on the alleged proposals submitted by the 5th respondent were not of the office and the concerned clerk and therefore, no proposals are pending.

As per Sub-rule 8, the burden of proof of having communicated the selection proposals to the competent authority shall lie with the educational agency and the educational agency also shall inform the competent authority within a month of the selection, and the competent authority shall grant approval unless the selection has

been in violation of these rules. If the approval is not granted within 2 months from the date of receipt of the proposals in respect of unaided posts, the approval shall be deemed to have been granted. Since there is a serious dispute with regard to the submission of the proposals to the competent authority, the same cannot be decided in this writ petition.

In the circumstances, since the order under challenge does not warrant interference of this Court, the writ petition is devoid of merit.

Accordingly, the writ petition is dismissed. No order as to costs. Interim direction granted, if any, shall be vacated.

However, it is open for the petitioners to avail all the remedies available to them.

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K.C. BHANU, J

Date: 03.08.2005

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